



## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1223

[Docket No. CPSC-2013-0025]

#### Revisions to Safety Standard for Infant Swings

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

**SUMMARY:** In November 2012, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant swings under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard that was in effect for infant swings at the time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. Consistent with the CPSIA update process, the Commission issued a direct final rule in October 2013, to revise the incorporation by reference for the mandatory swings standard, to reflect ASTM'S revised voluntary standard. Since 2013, ASTM has revised the voluntary standard for infant swings three times. This direct final rule updates the mandatory standard for infant swings to incorporate by reference ASTM's 2020 version of the voluntary standard.

**DATES:** The rule is effective on April 3, 2021, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a notice in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 3, 2021.

**ADDRESSES:** You can submit comments, identified by Docket No. CPSC-2013-0025, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov>. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Mail/hand delivery/courier Written Submissions:* Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may email such submissions to: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

*Instructions:* All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2013-0025, into the “Search” box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6820; email: [kwalker@cpsc.gov](mailto:kwalker@cpsc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **A. Background**

#### *1. Statutory Authority*

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or may be “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. When rejecting a revision, the Commission must notify the voluntary standards organization of this determination within 90 days of receiving notice of the revision. If the Commission does not take this action to reject the revised standard, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the Federal Register). 15 U.S.C. 2056a(b)(4)(B).

#### *2. Safety Standard for Infant Swings*

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223. The rule incorporated by reference

ASTM F2088-12a, *Standard Consumer Safety Specification for Infant Swings*, with modifications to the labeling and test method requirements.<sup>1</sup> 77 FR 66703 (Nov. 7, 2012). At the time the Commission published the final rule, ASTM F2088-12a was the current version of the voluntary standard.

In April 2013, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088-13. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new mandatory standard for infant swings. The Commission published a direct final rule to update 16 CFR part 1223, incorporating by reference ASTM F2088-13, without modification. 78 FR 37706 (June 24, 2013). After the Commission issued the revised mandatory standard in 2013, ASTM approved two more revisions: ASTM F2088-15 and ASTM F2088-19. However, ASTM did not officially notify CPSC of these revisions under CPSIA section 104(b)(4)(B). Consequently, these revised standards did not become the mandatory standards by operation of law, and the Commission did not update the mandatory standard to incorporate by reference these revised ASTM standards. Therefore, ASTM F2088-13 remained the mandatory standard.

On October 5, 2020, ASTM notified CPSC that it had revised the voluntary standard for infant swings, approving ASTM F2088-20 on June 15, 2020.<sup>2</sup> As this preamble discusses, based on CPSC staff's review of ASTM F2088-20,<sup>3</sup> the Commission will allow the revised voluntary standard to become the mandatory standard because the revised requirements in the voluntary standard either improve the safety of infant swings, or are safety neutral. Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088-20 will become the mandatory consumer product safety standard

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<sup>1</sup> The modifications included changes to the required warning label content and a revised test method to address an omission in the voluntary standard for toy mobiles attached to swings.

<sup>2</sup> ASTM published ASTM F2088-20 in July 2020.

<sup>3</sup> CPSC staff's briefing memorandum regarding ASTM F2088-20 is available at: <https://cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-Infant-and-Cradle-Swings.pdf?dTN6hRTePdIXPZ8oDFUd8DGAFHvUmP5i>.

for infant swings on April 3, 2021. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1223 to incorporate by reference the revised voluntary standard, ASTM F2088-20.

## **B. Revisions to ASTM F2088**

The ASTM standard for infant swings includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to infants associated with infant swings. ASTM has revised the voluntary standard for infant swings three times since ASTM F2088-13, which is the current mandatory standard. This section describes the changes in these three editions of the standard—ASTM F2088-15, ASTM F2088-19, and ASTM F2088-20. The revisions that ASTM included in the 2015 and 2019 versions of the standard are also in the newly revised version, ASTM F2088-20, although some section and figure numbers have changed to accommodate other revisions.

### *1. ASTM F2088-15*

On October 1, 2015, ASTM approved a revised version of the standard, ASTM F2088-15. ASTM did not notify the Commission of this revision. ASTM F2088-15 included one substantive change, several revisions to clarify existing requirements, and editorial revisions that did not alter substantive requirements in the standard or affect safety. The revisions that ASTM included in the 2015 version of the standard are also in the newly revised version, ASTM F2088-20.

#### *a. Substantive Revisions*

Section 6.5.2 of ASTM F2088-15 states: “swings with a maximum seat back angle greater than 50 degrees from horizontal measured in accordance with 7.13 shall include shoulder straps as part of the restraint system.” This requirement was already in the standard in ASTM F2088-13. However, ASTM F2088-15 added revised procedures for measuring the seat back and bottom angles for seat designs without a defined

intersection of the seat bottom and back (*i.e.*, curved seats), by adding a new figure to indicate how to determine the intersection for curved seats (Figure 11, sections 7.13-7.15). ASTM F2088-15 also added the word “gently” to the direction to “gently place the Hinged Weight Gage – Infant” in this procedure (sections 7.13-7.15).

ASTM F2088-13 did not address how to measure seat angles for curved seat designs. Without a defined method, test laboratories were left to interpret how to place the Hinged Weight Gauge - Infant in the seat, resulting in inconsistent measurements among test laboratories. Inconsistent measurements among test laboratories are problematic because these seat back angle measurements determine whether the product requires shoulder straps. Shoulder straps provide additional safety for infant swings, by preventing infant occupants from slumping forward when the seat back angle is greater than 50 degrees. Therefore, greater consistency in seat back measurements for curved seat designs improves the safety of infant swings, by ensuring that shoulder straps are included for infant swings with larger seat back angles.

*b. Non-Substantive Revisions*

ASTM F2088-15 also added information to provide greater clarity to consumers. ASTM F2088-13 already required a warning statement to “discontinue use of swing when infant attempts to climb out.” ASTM F2088-15 added “(approximately 9 months)” to this warning, to provide additional guidance to consumers on when to stop using the product (section 8.3.1.1(3)). ASTM F2088-15 also added minor formatting changes to align with ASTM form and style guidelines (*e.g.*, changed “in” to “in.”). These revisions are neutral regarding the safety of infant swings because they do not change any substantive requirements.

*2. ASTM F2088-19*

On November 15, 2019, ASTM approved a revised version of the standard, ASTM F2088-19. ASTM did not notify the Commission of this revision. ASTM F2088-

19 included one substantive change, as well as several editorial revisions that did not alter substantive requirements in the standard or affect safety. The revisions that ASTM included in the 2019 version of the standard are also in the newly revised version, ASTM F2088-20.

*a. Substantive Revisions*

ASTM F2088-19 added a definition for “tethered strap” (section 3.1.11), a performance requirement (section 6.9), and a test method (section 7.16) to address possible entanglement of non-occupant children in exposed tethered straps that connect the underside of the seat to the product frame or to other straps. The new requirements only apply to tethered straps, and not straps that are loose or hanging from the product (*i.e.*, not connected to other components). The new requirement limits the length of tethered straps to a maximum of 16 inches, when measured from the back of the seat to the first attachment point (*e.g.*, another strap or part of the product frame) in accordance with the test method in section 7.16.

ASTM based the 16-inch limit on the approximate perimeter of the small head probe described in ASTM F406-19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, which is 16.3 inches (section X1.4). The small head probe represents a 5<sup>th</sup> percentile 6-month-old child, which is the youngest child with the developmental ability to become entrapped in a tethered strap.<sup>4</sup> The ASTM ballot that lead to these requirements stated that they were intended to prevent a 6-month-old or older child from becoming entangled if exposed tethered straps under the seat of an infant swing formed a loop.

The new test method regarding tethered straps first assesses whether, over the course of five attempts, the tethered straps separate from the seat using a pull force of 5

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<sup>4</sup> ASTM F406-19, Section 5.15.3 states: “The small head probe represents the 5th percentile 6-month-old child because that is the youngest child having the developmental abilities to become entrapped.”

pounds. If the tethered straps separate in all five attempts, the tethered straps are exempt from the length limit. If the tethered straps remain attached in any one of the five attempts, the tethered straps under the seat are subject to the 16-inch maximum length limit. The test method also explains how to measure the length of the strap to determine whether it complies with the 16-inch limit, and refers to the new Figures 14 and 15 as examples. These figures illustrate how to measure the exposed length on two types of tethered strap configurations. For straps that attach to a rigid portion of the product, the length is measured from the point where the strap connects with the rigid surface (Figure 14). For straps that attach to another strap, the length is measured from the point where the strap first attaches to the other strap (Figure 15).

ASTM F2088-15 did not address the entanglement hazard for non-occupant children associated with tethered straps. As such, these added requirements improve the safety of infant swings by addressing this hazard for certain tethered strap designs.<sup>5</sup>

*b. Non-Substantive Revisions*

ASTM F2088-19 also included minor additions and revisions that did not affect the substantive requirements in the standard. The following revisions are neutral regarding the safety of infant swings because they do not change any substantive requirements:

- section 1.5 says “safety, health and environmental,” instead of “safety and health”;
- a new section 1.6 indicates that ASTM developed the standard in accordance with principles recognized by the World Trade Organization;

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<sup>5</sup> See staff’s briefing memorandum, available at <https://cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-Infant-and-Cradle-Swings.pdf?dTN6hRTEPdIXPZ8oDFUd8DGAFHvUmP5i>, for discussion of staff’s assessment that these added requirements only address the hazard for certain tethered strap designs.



- in section 2.1, the list of referenced ASTM standards reflects a change to the title of ASTM D3359 and adds ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*;
- revised unit expressions align with ASTM form and style guidelines (e.g., changed “hour” to “h”; changed “73 ± 9 °F” to “73 °F ± 9 °F”);
- minor spelling changes (e.g., changed “a/c” to “AC”); and
- updated section numbers to reflect added sections.

### 3. ASTM F2088-20

On June 15, 2020, ASTM approved a revised version of the standard, ASTM F2088-20. In accordance with CPSIA section 104(b)(4)(B), ASTM notified CPSC of this revision on October 5, 2020. ASTM F2088-20 includes several substantive changes, several revisions to clarify existing requirements, and editorial revisions that do not alter substantive requirements in the standard or affect safety. The revisions that ASTM included in the 2015 and 2019 versions of the standard are also in the newly revised version, ASTM F2088-20.<sup>6</sup>

Several changes in ASTM F2088-20 are intended to align with wording changes ASTM initiated for all of its juvenile products standards. After publishing ASTM F2088-13, ASTM convened a task group, the ASTM Ad Hoc Wording Task Group (Ad Hoc TG) to harmonize the wording of common provisions (e.g., introduction, scope, protective components), as well as warning label requirements, across durable infant and toddler product voluntary standards. The Ad Hoc TG consists of members of various durable nursery products voluntary standards committees, including CPSC staff. The final Ad Hoc TG recommendations are in a reference document, titled, “Recommended Language Approved by Ad Hoc Task Group, Revision E, May 28, 2019,” and are part of the F15 Committee Documents. ASTM F15 committees have used these

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<sup>6</sup> Some section and figure numbers may differ in ASTM F2088-20 due to other revisions.

recommendations to update juvenile products standards so that common provisions and requirements for warnings are consistent across the standards.<sup>7</sup> There are substantive and non-substantive revisions in ASTM F2088-20 that are intended to align with the Ad Hoc TG recommendations; these revisions are explained in more detail in subsections *a.*

*Substantive Revisions* and *b. Non-Substantive Revisions*, below.

*a. Substantive Revisions*

ASTM F2088-20 includes revisions and additions to substantive requirements, as well as changes that make existing requirements clearer or more explicit.

***Scope.*** A new section 1.3 specifies that the standard covers products with a powered mechanism that provides a swinging or gliding seat/cradle in any direction relative to the frame. Section 1.3 also notes that swinging or gliding mechanisms can be powered by batteries, AC adapters, wind-up mechanisms, or other means. These revisions do not expand or modify the scope of the standard. Other sections of the standard already addressed the listed features (*e.g.*, requirements regarding battery compartments and AC adapters), indicating that products with those features are within the scope of the standard. This revision merely highlights and clarifies that the standard covers this range of products. Accordingly, these changes to section 1.3 are neutral to the safety of infant swings because they do not alter any substantive requirements.

Section 1.3 also specifies that the standard does not cover products that are intended to provide sleeping accommodations for the occupant. This revision does not alter the scope of the standard. However, explicitly stating that the infant swing standard does not cover products intended for infant sleep will assist manufacturers to recognize that the swing standard is not applicable to products intended for sleep, which are subject

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<sup>7</sup> This process is ongoing, and ASTM has not yet updated all of its juvenile products standards to reflect these changes.

to other standards. As such, this revision improves the safety of infant swings because it clarifies the types of products that are subject to the standard.

**Referenced Documents.** Section 2.1 includes a new reference to ASTM F2194, *Standard Consumer Safety Specification for Bassinets and Cradles*, because this standard is referenced as part of a new requirement (see **General Requirements**, below).

**Terminology.** ASTM F2088-20 updates two definitions and adds a third to align with the Ad Hoc TG recommendations. The terms “conspicuous” (Section 3.1.2) and “static load” (Section 3.1.11) were already defined in the standard; the revisions simply modify wording and do not alter the substantive meaning of the terms. “Protective component” (Section 3.1.10) was not previously defined in the standard, but there were already requirements for “protective components” in the standard, and those provisions described the meaning of the term. The revision moves that description to a formal definition.

ASTM F2088-20 also includes updated definitions for “cradle swing” (Section 3.1.3) and “infant swing” (Section 3.1.5) to specify the maximum developmental and age limit for each product. This information was already in the warning requirements; the revisions only add these details to the formal definitions.

ASTM also added a new definition for “combination swing” (Section 3.1.1.) to address products with both a cradle swing and infant swing use, mode, or position. The standard already addressed “combination swings”—Section 8.5 describes them as products with both a cradle mode and a seated mode, and applies labeling requirements to them. However, the standard did not previously contain a formal definition of the term.

ASTM also revised the definition of “travel swing” (Section 3.1.14). Previously, ASTM defined “travel swing” as a “low-profile, compact swing,” grouping all compact swing products into a single term. The revised definition does the same, but because of the revised definitions of “infant swing,” “cradle swing,” and “combination swing,” the

revised definition of “travel swing” lists the compact versions of each product type (*i.e.*, “low-profile, compact infant, cradle, or combination swing”).

These revisions to the terminology in ASTM F2088-20 are neutral to the safety of infant swings because they do not alter the meaning of the terms or the substantive requirements that apply to these products.

***General Requirements.*** ASTM F2088-20 includes revised requirements for protective components (Section 5.8). The standard already required testing to assess the potential removal of protective components. The revision specifies that all protective components that are accessible to a child in or around the product must be evaluated according to the requirements for protective components. As such, the revision clarifies which protective components to assess. This revision improves the safety of infant swings because it ensures that all accessible protective components are tested for potential removal.

The standard also includes a new requirement that cradle swings or combination swings in a cradle swing use, mode, or position, while in the rest (*i.e.*, non-rocking) position, comply with the requirements of ASTM F2194, *Standard Consumer Safety Specification for Bassinets and Cradles* (section 5.11). As a general matter, ASTM F2088-20 does not cover products that are intended as sleeping accommodations (section 1.3) and the standard requires swings to display warnings that the products are not safe for unattended sleep (section 8.5.1). However, cradle swings, when at rest, have characteristics that are consistent with a stationary bassinet or cradle, where the occupant is lying flat, and is not being rocked. As such, cradle swings, while at rest, may serve as a sleep surface, despite the on-product warnings. If used as a sleep surface, these swings may present hazards consistent with a bassinet or cradle. ASTM F2194 addresses these hazards, including requirements to provide a safe sleep environment. This addition

improves the safety of infant swings because it requires swings that function like bassinets or cradles to meet the safety requirements for such products.

***Performance Requirements.*** Section 6.5 already included requirements for restraint systems and specified that a restraint system is required to secure an occupant in the seated position in any manufacturer-recommended use positions. However, ASTM F2088-20 adds to this requirement that cradle swings and combination swings, when in all manufacturer's use positions as a cradle swing, shall not have a restraint system. This prevents occupants of cradle swings (which are intended for infants from birth to approximately 5 months old) from getting entangled in restraints while lying flat, and is consistent with the bassinet standard (ASTM F2194). This revision improves the safety of infant swings by addressing a potential entanglement hazard.

***Marking and Labeling.*** ASTM F2088-20 does not include the previous requirement that manufacturers mark each product and its retail packaging with a model number and change the model number when they make changes to the product that affect conformance with the safety standard (previous Section 8.1.2). The ASTM ballot that led to removing this requirement suggested that the rationale was to provide consistency with other juvenile products standards, which do not contain this requirement. This requirement likely was intended to facilitate recalls, by providing a way to identify products made during a certain time. However, other remaining requirements accomplish this purpose. Section 8.1.2 still requires manufacturers to mark products with the month and year of manufacture, and 16 CFR 1130.4 requires manufacturers that use model names or numbers to permanently mark that identifying information on their infant or toddler products. Therefore, the revision is neutral with respect to the safety of infant swings because other requirements accomplish the same purpose.

ASTM F2088-20 also includes revised marking and labeling requirements, including warning formatting and wording, to align with the Ad Hoc TG

recommendations. Revised wording of warnings statements (Section 8.5) includes changing “Always secure infant in the restraint system provided” to “ALWAYS use restraints. Adjust to fit snugly,” and changing “Never leave infant unattended in swing” to “Stay near and watch infant during use.” This revised language more directly indicates to caregivers what actions to take.

The revised standard also includes two new warning subsections, for combination swings (Section 8.5.3) and travel swings (Section 8.5.4). The standard already included the warning requirements for these swing designs, but they were embedded in the general warning requirements. Moving them to individual sections based on product type highlights the importance of these warnings and clearly matches warnings with the corresponding product design.

The revised marking and labeling requirements in ASTM F2088-20 improve the safety of infant swings by providing clear, direct, and product-specific requirements, and providing consistency across juvenile product standards.

***Instructional Literature.*** ASTM F2088-20 includes revised requirements for instructional literature (Section 9) for consistency with the Ad Hoc TG recommendations and the revised warning label requirements in Section 8. These revisions improve the safety of infant swings by providing clear warning information and instructional literature that is consistent with the corresponding on-product warnings and across juvenile product standards.

*b. Non-Substantive Revisions*

ASTM F2088-20 also includes minor additions and revisions that are editorial and do not alter any substantive requirements in the standard. Because they do not change any substantive requirements, these revisions are neutral regarding the safety of infant swings.

**Title.** ASTM F2088-20 revises the title for the standard, changing it from “Standard Consumer Safety Specification for Infant Swings” to “Standard Consumer Safety Specification for Infant and Cradle Swings.” This title change does not alter the scope of the standard; performance requirements and test methods for cradle swings have been in the standard since ASTM first adopted it. This revision makes it clear in the title that the standard applies to cradle swings.

**Introduction.** The revised standard includes updated introduction language to align with the Ad Hoc TG recommendations. This includes replacing the statements regarding reasonably foreseeable misuse or abuse with a single statement that conveys the same information. Specifically, the revision retains the existing statement that the voluntary standard covers normal and reasonably foreseeable misuse or abuse of infant swings, and removes an additional sentence about careless or blatant misuse. This revision clarifies, and does not alter, the type of use covered by the standard. In addition, the introduction includes minor wording changes (*e.g.*, “infant swing incidents” changed to “incidents associated with swings intended for infants”).

**Scope.** ASTM F2088-20 includes minor wording changes in the scope section (*e.g.*, deleting “consumer safety” from “this consumer safety specification”) to harmonize with the Ad Hoc TG recommendations (Section 1.6).

**Referenced Documents.** ASTM F2088-20 includes a revised list of referenced documents. ASTM updated the title of Section 2.2 from “Federal Standards” to “Federal Regulations,” and added a new section 2.3 to include ANSI standards. These revisions are consistent with other ASTM standards and aligns with the Ad Hoc TG recommendations.

**General Requirements.** ASTM F2088-20 includes several revisions to section 5 to harmonize the wording with the Ad Hoc TG recommendations. These revisions include minor wording changes in the sections on “Scissoring, Shearing, and Pinching”

(Section 5.5), “Protective Components” (Section 5.8), and “Toys” (Section 5.10) (*e.g.*, changing “component” to “component(s),” changing “must meet” to “shall comply with”).

***Test Methods.*** Minor editorial revisions in the test methods section (Section 7) maintain consistency with wording and unit expressions in the rest of the standard and other ASTM standards (*e.g.*, adding a space after the number to change “68°F ± 9°F” to “68 °F ± 9 °F,” changing “0.040” to “0.04,” and correcting the spelling of “Gauge”). In addition, ASTM harmonized the “*Removal of Protective Components Test*” wording (Section 7.2) with the Ad Hoc TG recommendations. These revisions do not alter the substance of the requirements.

### **C. Incorporation by Reference**

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088-20. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F2088**, of this preamble summarizes the major provisions of ASTM F2088-20 that the Commission incorporates by reference into 16 CFR part 1223. The standard is reasonably available to interested parties and interested parties can purchase a copy of ASTM F2088-20 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone; 610-832-9585; [www.astm.org](http://www.astm.org). Additionally, until the direct final rule takes effect, a read-only copy of ASTM F2088-20 is available for viewing on ASTM’s website at: <https://www.astm.org/CPSC.htm>. Once



the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7479; email: [cpsec-os@cpsec.gov](mailto:cpsec-os@cpsec.gov).

#### **D. Certification**

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant swings are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1223 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,<sup>8</sup> the phthalates prohibitions in section 108 of the CPSIA<sup>9</sup> and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,<sup>10</sup> and the consumer registration form requirements in section 104(d) of the CPSIA.<sup>11</sup>

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<sup>8</sup> 15 U.S.C. 1278a.

<sup>9</sup> 15 U.S.C. 2057c.

<sup>10</sup> 15 U.S.C. 2063(a)(5).

<sup>11</sup> 15 U.S.C. 2056a(d).

## **E. Notice of Requirements**

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant swings. 78 FR 15836 (Mar. 12, 2013). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant swings to 16 CFR part 1223. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies," codified in 16 CFR part 1112. *Id.*

ASTM F2088-20 includes revised requirements for testing infant swings. However, these revisions to test requirements do not require additional equipment or test protocols beyond those that already exist in the standard. Accordingly, the revisions do not significantly change the way that third party conformity assessment bodies test these products for compliance with the infant swings standard. Laboratories will begin testing to the new standard when ASTM F2088-20 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088-13 to be capable of testing to ASTM F2088-20 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

## **F. Direct Final Rule Process**

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section

553 of the APA provides an exception when the agency, “for good cause finds,” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s standard by operation of law. The Commission is allowing ASTM F2088-20 to become CPSC’s new standard. The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2088-20 takes effect as the new CPSC standard for infant swings, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the

Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on April 3, 2021. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be "one where the commenter explains why the rule would be inappropriate," including an assertion challenging "the rule's underlying premise or approach," or a claim that the rule "would be ineffective or unacceptable without change." 60 FR 43108, 43111. As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

#### **G. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section **F. Direct Final Rule Process** of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

#### **H. Paperwork Reduction Act**

The current mandatory standard for infant swings includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The revised mandatory standard does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1223, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

## **I. Environmental Considerations**

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

## **J. Preemption**

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision “consumer product safety standards.” Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

## **K. Effective Date**

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant swings. Therefore, ASTM F2088-20 automatically will take effect as the new mandatory standard for infant swings on April 3, 2021, 180 days after the Commission received notice of the revision on October 5, 2020. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on April 3, 2021.

## **L. Congressional Review Act**

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

## **List of Subjects in 16 CFR Part 1223**

Consumer protection, Imports, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

**PART 1223 – SAFETY STANDARD FOR INFANT SWINGS**

1. Revise the authority citation for part 1223 to read as follows:

**Authority:** Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112-28, 125 Stat. 273.

2. Revise § 1223.2 to read as follows:

**§ 1223.2 Requirements for infant swings.**

Each infant swing shall comply with all applicable provisions of ASTM F2088-20, *Standard Consumer Safety Specification for Infant and Cradle Swings*, approved on June 15, 2020. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; phone: (610) 832-9585; [www.astm.org](http://www.astm.org). A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

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**Alberta E. Mills,**

*Secretary,*

*Consumer Product Safety Commission.*

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